

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 11067 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BR SOLANKI & 3 - Petitioners
Versus
STATE OF GUJARAT & 2 - Respondents

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= **Appearance :**

MR CB DASTOOR for Petitioners : 1 - 4.

MR HEMANT MAKWANA AGP for Respondents : 1 - 3.

RULE NOT RECD BACK for Respondents : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE
S.R.BRAHMBHATT

Date : 19/11/2007

ORAL JUDGMENT

1. The petitioners, Peon-cum-Driver working in the office of

the District Collector, Ahmedabad have approached this Court under Article 226 of the Constitution of India seeking writ of mandamus or any other appropriate writ, order or direction to the respondents to accord the equal treatment of upgrading their posts from Peon-cum-Driver to that of Driver as it is accorded in case of some of the similarly situated employees of Kheda District and Surat district. The denial to accord the said benefit is violative of Articles 14 and 16 of the Constitution of India.

2. Facts in brief deserve to be set out as under.
3. The petitioners have been working as Peon-cum-Driver. The petitioners have also made grievances in respect of non-granting them the benefits of higher pay scale in pursuant to the Government Resolution dated 16.8.1994, wherein, the employee, who has been eligible and yet not promoted to the higher post and has stagnated on the said post for 9 years, is entitled to receive benefits of higher pay scale of the promotional posts. The similarly situated Peon-cum-Driver on the establishment of the Kheda Collectorate and Surat Collectorate were given benefits by the State, Revenue Department and their posts were upgraded to that of Drivers. The present petitioners, who were working as Peon-cum-Driver in the Ahmedabad Collectorate have not been accorded the same benefit despite the repeated requests. The petitioners were constrained to file petition being Special Civil Application No. 5058 of 2003, which was disposed of by this Court (Coram: P.B.Majmudar, J.) vide order dated 22.4.2003. This Court (Coram: P.B.Majmudar, J.) issued

directions to the concerned Collector to decide petitioners' representation within the stipulated time. On such direction, the petitioners had withdrawn the petition. The petitioners accordingly preferred representation on 1.5.2003 enlisting the grievances. The concerned Collector did not decide the same and therefore, notice was required to be issued for due compliance with the order of this Court (Coram: P.B.Majmudar, J.) dated 22.4.2003. The petitioners had to once again file the present petition as the representation had remained undecided. The respondents have during the pendency of this petition vide letter dated 29.8.2003 rejected the representation. Learned AGP Shri Makwana for the State has placed on record the said order. The respondents have rejected the representation in respect of three enlisted demands that promotion to the post of Driver was given as per the seniority in the establishment; with regard to second demand of receiving higher scale of pay on the basis of the Finance Department Resolution dated 16.8.1994, the respondents have admitted that the petitioners were entitled to receive the benefit of higher pay scale but not the scale admissible to the post of driver and with regard to third demand of seeking benefit of upgradation, it is admitted by the respondents that proposal was in fact moved to the State. But the respondent State vide circular/letter dated 10.1.2002 informed all the Collectors that due to prevalent economy measure, the demands like upgradation of the post of Peon-cum-Driver to that of Driver cannot be accepted. The petitioners have thus not been given either the benefit of higher pay scale admissible to the post of

Driver nor have they been given the benefits of up-gradation of their posts namely Peon-cum-Driver to that of Driver as it has been given in case of Kheda Collectorate and Surat Collectorate. The petitioners have filed the petition challenging the denial.

4. Shri Dastoor, learned counsel appearing for the petitioners has submitted that the respondents have acted discriminately in denying the benefits of up-gradation so far as the present petitioners are concerned in Ahmedabad District Collectorate. The respondent - Revenue Department of the State did accord such benefits to the Peon-cum-Driver in Kheda District Collectorate, as it is evident from the order dated 21.1.1990 issued by the Government indicating that those employees who were posted as Peon-cum-Driver since last 10 years and those, who were working as Peon-cum-Driver since last 5 years, were required to be given benefits of up-gradation and those posts were required to be upgraded to that of Driver in the then existing scale of 950-1500 of the Driver. Similar orders were issued in respect of Surat Collectorate also. The said benefit was accorded to the Peon-cum-Driver working in the Surat Collectorate vide order dated 13.11.1991. Shri Dastoor has submitted that respondents have not only acted arbitrarily but they have in fact victimized the petitioners for filing this petition. Shri Dastoor has invited this Court's attention to the order of promotion of the present petitioner No. 1 to that of Driver, which was effected on 26.8.2003 and subsequently he was reverted to his original post of Peon-cum-Driver vide order dated

19.11.2003. Shri Dastoor has submitted that the petitioners are entitled to receive benefits of up-gradation and in the alternative, they are entitled to receive the benefits of higher pay scale admissible to the post of Driver in light of Government Resolution dated 16.8.1994, denial of the same is arbitrary, capricious and deserves to be quashed and set aside. Shri Dastoor has relied upon the decision of the Allahabad High Court in case of **THE COMMITTEE OF MANAGEMENT OF BHABANAND SANSKRIT MAHAVIDYALAYA, AZAMGAR VS. EDUCATION SECRETARY, U.P. GOVERNMENT, LUCKNOW AND OTHERS,** reported in AIR 1994 Allahabad 103 and submitted that paucity of funds cannot be the ground for denying equal treatment to similarly situated employees. Shri Dastoor has also relied upon the decision of the Apex Court in case of **BHAGWAN SAHAI CARPENTER AND OTHERS VS UNION OF INDIA AND ANOTHER,** reported in (1989) 2 Supreme Court Cases 299 and submitted that the benefits of up-gradation, if granted to a class of employees, then, similarly situated persons cannot be denied the benefits nor can they be discriminated against in any manner in giving effect of the upgradation.

5. Shri Makwana, learned AGP appearing for the respondents has submitted that benefits of up-gradation cannot be granted to the petitioners as two incidents mentioned and pressed into service by the petitioners in respect of giving benefits to the Peon-cum-Driver of Kheda Collectorate and Surat Collectorate are of no avail to them as said incidents pertains to the year 1990-1991

and thereafter, due to paucity of funds, the respondent State was constrained to exercise economy measures and under that measure, benefits of up-gradation was not permissible to the employees like petitioners. Shri Makwana has submitted that, therefore, the benefit of up-gradation has rightly been denied to the petitioners. Shri Makwana has submitted that so far as demand for higher pay scale pursuant to the Government Resolution dated 16.8.1994 is concerned, the same was in fact accorded to the petitioners as could be seen from the record. However, the petitioners have declined to accept the same on the ground that the post of Nayak, whose scale was made available to them was not promotional post. Shri Makwana has relied upon the policy dated 16.8.1994 and Government Resolution and order dated 8.12.2000 passed by the District Collector and submitted that the petitioners were rightly given the benefit of higher pay scale of the scale admissible to the post of Nayak. The order dated 30.10.2000 and 8.12.2000 are taken on record. Shri Makwana submits that Peon-cum-Driver receive their salary in the pay scale of Rs.2550-3200, whereas, the persons holding the post of Nayak receive their salary in the pay scale of Rs.2600-3540 and scale admissible to the Driver is Rs.3050-4500. As the petitioners were holding the post of Peon-cum-Driver in the scale of Rs.2550, the next higher scale admissible is that of post of Nayak i.e Rs.2660-3540, which was made available, but the petitioners declined to accept it on the ground that post of Nayak is not the promotional post and therefore, they were entitled to benefits of higher pay scale of Driver's post, the petitioners cannot be said to be

entitled for receiving the scale for the post of driver. Shri Makwana has heavily relied upon the two affidavit-in-reply filed by the Collector and Under Secretary respectively and submitted that in fact the post of Peon-cum-Driver is no more exists and therefore, benefit of up-gradation cannot be granted. Shri Makwana has relied upon the Rules called "The Class IV (in Inferior Service) in the Gujarat Secretariat and non-Secretariat Offices Recruitment Rules, 2005 (hereinafter referred to as the 'Rules of 2005) and submitted that as per this Rules, the post of Peon-cum-Driver no more exists and therefore, the petitioners have no right to be given the benefits of up-gradation as it happened in case of Peon-cum-Driver of Kheda Collectorate and Surat District Collectorate. Shri Makwana has also relied upon the Government Resolution dated 23.5.2006 and more particularly item No.5, wherein, it is observed that now onwards the promotion and up-gradation were considered as per this policy. Shri Makwana has submitted that the petitioners have not made out case and therefore, the petition deserves to be dismissed.

6. Heard learned counsel Shri Dastoor for the petitioner and Shri Makwana, learned AGP for the respondents at length and perused the papers.
7. The petitioners have categorically contended and made averments on oath in the memo of petition that they were appointed as Peon-cum-Driver and they were discharging their duties as Drivers only and not for a single day, they have been asked to discharge duties as

Peon, however, they were paid salary for the post of Peon only. This averments made on oath gets support from the order dated 21.6.1991 and 31.8.1991, wherein, the District Collector has extensively referred to the nomenclature "Peon-cum-Driver". In the order dated 21.6.1991, the transfer is effected in the public interest of persons in the cadre of Peon-cum-Driver. The concerned Collector has also made reference to this nomenclature and used the word "Peon-cum-Driver cadre". It also deserves to be noted that in the affidavit-in-reply filed by Additional Collector-respondent No. 3 on 29.8.2003 in Para-5, it is categorically mentioned that the recruitment rules in respect of Peon-cum-Driver are framed by the Revenue Department and the petitioners are recruited as per the Rules. It is also averred in para-5 of the affidavit-in-reply by the Additional Collector that the petitioners are liable to discharge their duties as Driver in addition to their duties as Peon and as and when posts of Driver falls vacant, they would be given promotion to the posts of Driver as per seniority. In the affidavit-in-reply filed by the Under Secretary, Government of Gujarat, on 6.8.2007, it is averred in para-4 that the petitioners are Class-IV employees working as Peon-cum-Driver and they are paid salary of Peon in addition to the salary of peon, they are paid special pay of Rs.100/- per month for performing duties of driving as per the Rules. It is also averred that as and when post of Driver falls vacant, the promotion from the post of peon-cum-driver is made in accordance with their qualification. In the affidavit-in-reply filed by the Under Secretary, State of Gujarat, it is further averred that the order dated 21.8.1990 and order dated

13.11.1991 indicate that the persons working as Peon-cum-Driver were given promotion to the post of Driver against upgradation of the post as approved by the Finance Department in accordance with Rules. It is further averred in the affidavit filed by Under Secretary, State of Gujarat that in view of economy measures implemented by the Government, all the Collectors in the State were informed vide letter dated 10.1.2002 issued by the Under Secretary, Revenue Department, Gandhinagar that the policy of upgrading posts of Peon-cum-Driver to the Driver cadre cannot be implemented as there was a ban of upgradation since 10.1.2002. Thus because of this ban, the persons like present petitioners who are working as Peon-cum-Driver were left out and did not get the benefits of upgradation.

8. The question arises as to whether the State is justified in denying the upgradation to the persons holding post of Peon-cum-Driver on account of exercising economy measures or for paucity of funds, the answer is clearly 'no'. The paucity of funds cannot be a ground for perpetrating discriminatory treatment to a class of employees only. The observation of Allahabad High Court in case of The Committee of Management of Bhabananad Sanskrit Mahavidhyalaya (Supra) would support the contention of the petitioners that paucity of funds alone cannot be a ground for denying the equal treatment to a class of employees.
9. It deserves to be noted at this stage that the reliance upon recruitment Rules called "The Class IV (in Inferior

Service) in the Gujarat Secretariat and non-Secretariat Offices Recruitment Rules, 2005 and also upon the Government Resolution dated 23.5.2006 is of no avail to the respondents for denying the equal treatment to the present petitioners. The Recruitment Rules are framed in the year 2005 and this recruitment rules also did not in any way restrain the respondents from upgrading the posts of Peon-cum-Driver to that of Driver and therefore, the recruitment Rules dated 16.3.2005 are per-se of no avail to the respondents for denying equal treatment to the petitioners.

10. The petitioners can claim equality vis-a-vis the persons in whose favour or on earlier occasion the upgradation benefit was granted in as much as those persons in the Collectorate of Surat and Kheda districts also held the same posts called 'Peon-cum-Driver' and the present petitioners were also recruited and are holding the posts of Peon-cum-Driver. It is not the say of the respondent State that upgradation was only of one time measurement for alleviating the grievance of the then Peon-cum-Driver and it was not to be resorted to thereafter. In fact, it deserves to be noted that the affidavit-in-reply in unequivocal terms go to show that at the relevant time, the revenue department framed recruitment rules for making appointment to the post of Peon-cum-Driver and such persons holding such posts were though performing duties of driver, are paid salary of the peon only. If at the relevant time in order to alleviate the plight of the then Peon-cum-Driver in the Collectorate of Surat and Kheda the upgradation was

ordered, then, the same reasoning ought to have been applied while considering the present petitioners request for upgrading their posts to that of driver. Denial to extend the benefits of upgradation on this count to the petitioners amounts to denying the equal treatment or at least denying them unfairly the opportunity of being upgraded. The State has not intimated any cogent reasons except the paucity of funds and economy measures for not implementing the upgradation in respect of Peon-cum-Driver in other Collectorates. Thus it could be well said that the petitioners have made out case for upgradation. The matter of upgradation cannot be said to be a matter of policy and if a class of employee is given the benefits of upgradation, then, subsequently similarly situated persons are also entitled to claim the upgradation and it cannot be only denied on the ground of economy measures. It would have been different situation when the upgradation was effected in cases of Surat Collectorate and Kheda Collectorate in the year 1990 and 1991 as a one time measurement only and it was covering all the Peon-cum-Driver of all Collectorate but it is not the case as even while upgrading the posts on the establishment of Kheda Collectorate and Surat Collectorate, the Peon-cum-Driver of other Collectorates were left out. The respondent State has not explained as to why other Collectorates were left out nor is it the case of the respondent State that the appointment to the post of Peon-cum-Driver has thereafter not been made as it is evident from the record the appointment of Peon-cum-Driver continued to be made and persons like petitioners though appointed as Peon-cum-Driver with additional

allowance of Rs.100/- per month were required for discharging duties as driver. This treatment to the petitioners cannot be said to be a fair treatment in our system nor would it be said to be in conformity with the principles enshrined in Constitution of India.

11.The petitioners have in the alternatively prayed that at least they be given the benefits of higher grade pay scale pursuant to Government Resolution dated 16.8.1994, the same has been wrongly denied to them. The petitioners submission deserves to be examined in light of the relevant averments and documents produced on record. As it is stated hereinabove, the respondents have at number of places in affidavits in reply averred that the promotion from the post of Peon-cum-Driver lies only to the post of Driver and not to the post of Nayak. Therefore, keeping in mind the provisions of Government Resolution dated 16.8.1994, it can well be said that as per the provisions of GR, the next promotional post from post of Peon-cum-Driver is that of Driver only and therefore, the petitioner could not have been denied the benefits of higher grade pay scale admissible to the post of Driver. It deserves to be noted that petitioners are though classified to be Class-IV employees, the posts of Peon-cum-Driver is certainly the post wherefrom, the promotion lies to the post of Driver only. Had it been a post of only a Peon simplicitor then, one can accept the submission that the peon is ordinarily promoted to the post of Nayak as it is now banned under Government Resolution dated 23.5.2006 but in the instant case, as per the averments of the deponent in the affidavit-in-reply, it

can well be said that so far as persons holding post of Peon-cum-Driver are concerned, their next promotion is to the post of Driver only and therefore, even on this count also, the petitioners are entitled to receive benefits of higher grade pay scale admissible to the post of Driver.

12. In view of the aforesaid, this petition deserves to be allowed with following directions.

The respondents are hereby directed to consider the petitioners' case either for upgradation to the post of Driver or consider them for according benefits of higher grade pay scale admissible to the post of Driver in accordance with the provisions of Government Resolution dated 16.8.1994. The respondents are at liberty to either upgrade the post of Peon-cum-Driver in case of the petitioners to that of Driver or accord the petitioners the benefit of higher grade pay scale in accordance with Government Resolution dated 16.8.1994. The entire exercise of considering and according appropriate pay scale and paying arrears to be completed within three months from the date of receipt of the order.

13. In view of the aforesaid direction, the petition is partly allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

[S.R.BRAHMBHATT, J.]

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